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CHP Officer Keene, CHP Officer Tolen, and
CHP Sergeant Waughan
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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 ROBERT S. MARKMAN,
14 Plaintiff,
15 v.
16 RACHEL LASOTA, et al.,
17 Defendants.

Case No. CV 15-03335 DDP (KLS)
**DEFENDANT CHP OFFICER
KEENE'S (ERRONEOUSLY
NAMED AS KEANE) ANSWER TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT**

DEMAND FOR JURY TRIAL

Judge: Dean D. Pregerson
Courtroom: 3

Trial Date Not set yet
Action Filed: May 4, 2015

1 Defendant CHP Officer Keene (erroneously named in the caption as Keane)
2 hereby answers, admits, denies, and alleges in response to the Second Amended
3 Complaint (Complaint) of Plaintiff Robert S. Markman (Plaintiff), and asserts his
4 affirmative defenses against Plaintiff as follows:

5 I.

6 JURISDICTION AND VENUE

7 1. This allegation is not a factual allegation requiring a response under
8 Federal Rule of Civil Procedure 8. Nevertheless, Keene denies that he violated
9 Plaintiff's constitutional rights or deprived him of his constitutional rights under
10 Title 42, United States Code section 1983 (Section 1983).

11 2. Keene admits the allegations in Paragraph 2 of the Complaint.

12 II.

13 GOVERNMENT CLAIMS ACT

14 3. Keene admits that Plaintiff filed a Government Claim Form dated
15 October 23, 2014, and it was designated as Claim No. G621129 by the Government
16 Claims Program. Keene also admits that Plaintiff's Government Claim lists him as
17 a person against whom the claim was filed, and that Plaintiff's Government Claim
18 was rejected on January 15, 2015. Except as expressly admitted, Keene denies each
19 and every remaining allegation in Paragraph 3 of the Complaint.

20 III.

21 PARTIES

22 4. Keene admits, upon information and belief, the allegations in
23 Paragraph 4 of the Complaint.

24 5. Keene admits that Plaintiff has sued Rachel LaSota in her individual
25 capacity. Keene also admits, upon information and belief, that LaSota was an
26 employee of the State of California at all times mentioned in Plaintiff's Complaint,
27 and, in that capacity, she acted under the color of state law. Keene is without
28 sufficient knowledge or information to enable him to answer as to the truth of the

1 remainder of the allegations contained in Paragraph 5 of the Complaint, and on that
2 ground denies each and every allegation in that paragraph of the Complaint not
3 expressly admitted.

4 6. Keene admits that Plaintiff has sued Jeremy Tolen in his individual
5 capacity. Keene also admits that Officer Tolen was an officer of the California
6 Highway Patrol at all times mentioned in Plaintiff's Complaint, and, in that
7 capacity, he acted under the color of state law. Except as expressly admitted,
8 Keene denies each and every remaining allegation in Paragraph 6 of the Complaint.

9 7. Keene admits that at all times mentioned in Plaintiff's Complaint he
10 was an officer of the California Highway Patrol with the Badge No. 20727, and, in
11 that capacity, he acted under the color of state law. Keene also admits that he was
12 incorrectly named in the caption of Plaintiff's Complaint as Officer Keane. He
13 further admits that Plaintiff's Complaint states that he is being sued in his
14 individual capacity. Except as expressly admitted, Keene denies each and every
15 remaining allegation in Paragraph 7 of the Complaint.

16 8. Keene admits that Plaintiff has sued Sergeant Waughan in his
17 individual capacity. Keene also admits that Sergeant Waughan was an officer of
18 the California Highway Patrol at all times mentioned in Plaintiff's Complaint, and,
19 in that capacity, he acted under the color of state law. Keene is without sufficient
20 knowledge or information to enable him to answer as to the truth of the remainder
21 of the allegations contained in Paragraph 8 of the Complaint, and on that ground
22 denies each and every allegation in that paragraph of the Complaint not expressly
23 admitted.

24 ||| 9. Keene denies the allegations in Paragraph 9 of the Complaint.

IV.

INTRODUCTION

27 10. This allegation is not a factual allegation requiring a response under
28 Federal Rule of Civil Procedure 8. Nevertheless, Keene denies the allegations in

1 Paragraph 10 of the Complaint and denies that Plaintiff is entitled to any
2 compensation.

3 V.

4 FACTUAL ALLEGATIONS

5 11. Keene admits, upon information and belief, that Plaintiff was a
6 medical doctor licensed to practice medicine in the State of California at the time
7 that he filed his Complaint. Keene is without sufficient knowledge or information
8 to enable him to answer as to the truth of the remainder of the allegations contained
9 in Paragraph 11 of the Complaint, and on that ground denies each and every
10 allegation in that paragraph of the Complaint not expressly admitted.

11 12. Keene is without sufficient knowledge or information to enable him to
12 answer as to the truth of the allegations contained in Paragraph 12 of the Complaint,
13 and on that ground denies each and every allegation in that paragraph of the
14 Complaint not expressly admitted.

15 13. Keene is without sufficient knowledge or information to enable him to
16 answer as to the truth of the allegations contained in Paragraph 13 of the Complaint,
17 and on that ground denies each and every allegation in that paragraph of the
18 Complaint not expressly admitted.

19 14. Keene is without sufficient knowledge or information to enable him to
20 answer as to the truth of the allegations contained in Paragraph 14 of the Complaint,
21 and on that ground denies each and every allegation in that paragraph of the
22 Complaint not expressly admitted.

23 15. Keene is without sufficient knowledge or information to enable him to
24 answer as to the truth of the allegations contained in Paragraph 15 of the Complaint,
25 and on that ground denies each and every allegation in that paragraph of the
26 Complaint not expressly admitted.

27 16. Keene is without sufficient knowledge or information to enable him to
28 answer as to the truth of the allegations contained in Paragraph 16 of the Complaint,

1 and on that ground denies each and every allegation in that paragraph of the
2 Complaint not expressly admitted.

3 17. Keene is without sufficient knowledge or information to enable him to
4 answer as to the truth of the allegations contained in Paragraph 17 of the Complaint,
5 and on that ground denies each and every allegation in that paragraph of the
6 Complaint not expressly admitted.

7 18. Keene is without sufficient knowledge or information to enable him to
8 answer as to the truth of the allegations contained in Paragraph 18 of the Complaint,
9 and on that ground denies each and every allegation in that paragraph of the
10 Complaint not expressly admitted.

11 19. Keene is without sufficient knowledge or information to enable him to
12 answer as to the truth of the allegations contained in Paragraph 19 of the Complaint,
13 and on that ground denies each and every allegation in that paragraph of the
14 Complaint not expressly admitted.

15 20. to 24. There are no paragraphs 20 to 24 in Plaintiff's Complaint.

16 25. Keene is without sufficient knowledge or information to enable him to
17 answer as to the truth of the allegations contained in Paragraph 25 of the Complaint,
18 and on that ground denies each and every allegation in that paragraph of the
19 Complaint not expressly admitted.

20 26. Keene is without sufficient knowledge or information to enable him to
21 answer as to the truth of the allegations contained in Paragraph 26 of the Complaint,
22 and on that ground denies each and every allegation in that paragraph of the
23 Complaint not expressly admitted.

24 27. Keene is without sufficient knowledge or information to enable him to
25 answer as to the truth of the allegations contained in Paragraph 27 of the Complaint,
26 and on that ground denies each and every allegation in that paragraph of the
27 Complaint not expressly admitted.

28 28. Keene is without sufficient knowledge or information to enable him to

1 answer as to the truth of the allegations contained in Paragraph 28 of the Complaint,
2 and on that ground denies each and every allegation in that paragraph of the
3 Complaint not expressly admitted.

4 29. Keene admits that Plaintiff was sitting on the curb in the parking lot
5 when he and Officer Tolen arrived, and that they took Plaintiff to College Hospital
6 of Cerritos. Keene affirmatively asserts that there was probable cause or reasonable
7 suspicion for Plaintiff's detention. Keene is without sufficient knowledge or
8 information to enable him to answer as to the truth of the remainder of the
9 allegations contained in Paragraph 29 of the Complaint, and on that ground denies
10 each and every allegation in that paragraph of the Complaint not expressly
11 admitted.

12 30. Keene admits that when he and Officer Tolen arrived at the parking
13 lot, they spoke with Sergeant Waughan, LaSota, a deputy from the Los Angeles
14 County Sheriff's Department, and another employee of the Medical Board before
15 requesting that Plaintiff stand up and turn around to be handcuffed. Keene also
16 admits that he and Officer Tolen handcuffed Plaintiff with his arms behind his
17 back, instead of using a bent wrist method, as an accommodation for Plaintiff's
18 purported shoulder injury, then they put Plaintiff in their patrol vehicle. Keene
19 further admits that someone walked over to Plaintiff's car, but denies that they
20 searched it. Keene is without sufficient knowledge or information to enable him to
21 answer as to the truth of the allegations contained in Paragraph 30 of the Complaint
22 that relate to events that occurred prior to Keene's arrival on the scene. Keene
23 admits, upon information and belief, that LaSota was a current Medical Board
24 probation supervisor, but is without sufficient knowledge or information to enable
25 him to answer as to the truth of the allegation that LaSota was a former or current
26 peace officer, and on that ground denies this allegation. Except as expressly
27 admitted, Keene denies each and every remaining allegation in Paragraph 30 of the
28 Complaint.

1 31. Keene admits that Officer Tolen spoke with LaSota, Sergeant
 2 Waughan, and other employees of the Medical Board and the Los Angeles County
 3 Sheriff's Department prior to driving with Officer Keene and taking Plaintiff to
 4 College Hospital of Cerritos. Keene also admits that Officer Tolen filled out an
 5 Application for 72-Hour Detention for Evaluation and Treatment at College
 6 Hospital of Cerritos. Keene is without sufficient knowledge or information to
 7 enable him to answer as to the truth of the remainder of the allegations contained in
 8 Paragraph 31 of the Complaint, and on that ground denies each and every allegation
 9 in that paragraph of the Complaint not expressly admitted.

10 32. Keene admits that Officer Tolen filled out an Application for 72-Hour
 11 Detention for Evaluation and Treatment at College Hospital of Cerritos. Keene is
 12 without sufficient knowledge or information to enable him to answer as to the truth
 13 of the remainder of the allegations contained in Paragraph 32 of the Complaint, and
 14 on that ground denies each and every allegation in that paragraph of the Complaint
 15 not expressly admitted.

16 33. Keene admits that he and Officer Tolen handcuffed Plaintiff with his
 17 arms behind his back, instead of using a bent wrist method, as an accommodation
 18 for Plaintiff's purported shoulder injury. Keene also admits and affirmatively
 19 asserts that Plaintiff was resisting the placement of his arms behind his back and,
 20 upon information and belief, that Plaintiff was told that he might have to be tased if
 21 he did not relax or cooperate. Except as expressly admitted, Keene denies each and
 22 every remaining allegation in Paragraph 33 of the Complaint.

23 34. Keene admits: (1) Plaintiff was detained and taken to College Hospital
 24 of Cerritos for mental health evaluation based on Section 5150, and (2) Officer
 25 Tolen completed an Application for 72-Hour Detention for Evaluation and
 26 Treatment. Keene is without sufficient knowledge or information to enable him to
 27 answer as to the truth of the allegations concerning what information LaSota
 28 provided to Officer Tolen contained in Paragraph 34 of the Complaint, and on that

1 ground denies those allegations in that paragraph of the Complaint not expressly
 2 admitted. Except as expressly admitted, Keene denies each and every remaining
 3 allegation in Paragraph 34 of the Complaint.

4 35. Keene admits that Officer Tolen completed an Application for 72-
 5 Hour Detention for Evaluation and Treatment for Plaintiff. Keene is without
 6 sufficient knowledge or information to enable him to answer as to the truth of the
 7 remainder of the allegations contained in Paragraph 35 of the Complaint, and on
 8 that ground denies each and every allegation in that paragraph of the Complaint not
 9 expressly admitted.

10 36. Keene admits that Officer Tolen completed an Application for 72-
 11 Hour Detention for Evaluation and Treatment for Plaintiff. Keene is without
 12 sufficient knowledge or information to enable him to answer as to the truth of the
 13 remainder of the allegations contained in Paragraph 36 of the Complaint, and on
 14 that ground denies each and every allegation in that paragraph of the Complaint not
 15 expressly admitted.

16 37. Keene admits that he and Officer Tolen handcuffed Plaintiff and
 17 detained him to take him to College Hospital of Cerritos for a mental health
 18 evaluation. Keene affirmatively asserts that there was probable cause or reasonable
 19 suspicion for Plaintiff's detention for a mental health evaluation. Except as
 20 expressly admitted, Keene denies each and every remaining allegation in Paragraph
 21 37 of the Complaint.

22 38. Keene is without sufficient knowledge or information to enable him to
 23 answer as to the truth of the allegations contained in Paragraph 38 of the Complaint,
 24 and on that ground denies each and every allegation in that paragraph of the
 25 Complaint not expressly admitted. However, Keene affirmatively denies that
 26 College Hospital of Cerritos's staff had any statements written by him.

27 39. Keene admits that he prepared and signed the Narrative/Supplemental
 28 for the Arrest-Investigation Report concerning the incident with Plaintiff on May

1 29, 2014. Keene also admits that Officer Tolen assisted him with the information
 2 contained in the Narrative/Supplemental. Keene also admits and affirmatively
 3 asserts that although subparagraphs a. to h. are substantially similar to the contents
 4 of the Narrative/Supplemental, they do not fully and completely quote those
 5 contents nor do these subparagraphs contain the full contents of the
 6 Narrative/Supplemental. Except as expressly admitted, Keene denies each and
 7 every remaining allegation in Paragraph 39 of the Complaint.

8 40. Keene admits, upon information and belief, that Officer Tolen
 9 prepared a Narrative/Supplemental that was included with the Arrest-Investigation
 10 Report prepared by Keene concerning the incident with Plaintiff on May 29, 2014.
 11 Keene also admits that: (1) Officer Tolen gave Plaintiff a lawful order to stand up,
 12 turn around, and put his hands behind him in order to detain Plaintiff for a mental
 13 evaluation pursuant to California Welfare and Institutions Code section 5150, (2)
 14 Plaintiff was inappropriately attired, and (3) when Officer Tolen and I began to
 15 detain and handcuff Plaintiff, Plaintiff physically resisted, moved his arms and hand
 16 in front of his torso, tensed up, and Plaintiff had to be told by Officer Tolen that
 17 they were there to help him and not hurt him before Plaintiff permitted himself to
 18 be handcuffed behind his back. Keene affirmatively asserts that although
 19 subparagraphs a. to m. are substantially similar to the contents of the
 20 Narrative/Supplemental, they do not fully and completely quote those contents nor
 21 do these subparagraphs contain the full contents of the Narrative/Supplemental.
 22 Keene also specifically denies that subparagraphs f. and h. are false. Keene is
 23 without sufficient knowledge or information to enable him to answer as to the truth
 24 of the remainder of the allegations contained in Paragraph 40 of the Complaint, and
 25 on that ground denies each and every allegation in that paragraph of the Complaint
 26 not expressly admitted.

27 41. Keene admits that when he and Officer Tolen arrived at the parking
 28 lot, Officer Tolen spoke with Sergeant Waughan, LaSota, a deputy from the Los

1 Angeles County Sheriff's Department, and another employee of the Medical Board
2 before requesting that Plaintiff stand up and turn around to be handcuffed. Except
3 as expressly admitted, Keene denies each and every remaining allegation in
4 Paragraph 41 of the Complaint.

5 42. Keene denies the allegations in Paragraph 42 of the Complaint.

6 43. Keene is without sufficient knowledge or information to enable him to
7 answer as to the truth of the allegations contained in Paragraph 43 of the Complaint,
8 and on that ground denies each and every allegation in that paragraph of the
9 Complaint not expressly admitted. However, Keene denies that any documents
10 prepared or filled out by him was provided to College Hospital of Cerritos.

11 44. Keene admits that he was told by Officer Tolen that LaSota said some
12 words to the effect that Plaintiff stated, "I am going to come with nothing but the
13 gun God gave me." Keene is without sufficient knowledge or information to enable
14 him to answer as to the truth of the remainder of the allegations contained in
15 Paragraph 44 of the Complaint, and on that ground denies each and every allegation
16 in that paragraph of the Complaint not expressly admitted.

17 45. Keene admits that he testified under oath in March 2016 during an
18 administrative hearing being prosecuted by the Medical Board of California against
19 Plaintiff in Los Angeles, California. Upon information and belief, Keene also
20 admits that Sergeant Waughan, Officer Tolen, and LaSota testified during the same
21 administrative hearing in March 2016. Except as expressly admitted, Keene denies
22 each and every remaining allegation in Paragraph 45 of the Complaint.

FIRST CLAIM

24 46. Keene incorporates by reference his answers to Paragraphs 1 through
25 45 of Plaintiff's Complaint. Except as expressly admitted, Keene denies the
26 allegations in Paragraph 46 of the Complaint.

27 47. Keene admits that at all times mentioned in Plaintiff's Complaint he
28 was an employee of the state of California, and, in that capacity, he acted under the

1 color of state law. Keene also admits that Sergeant Waughan and Officer Tolen
2 were employees of the State of California at all times mentioned in Plaintiff's
3 Complaint, and, in that capacity, they acted under the color of state law. Upon
4 information and belief, Keene admits that at all times mentioned in Plaintiff's
5 Complaint, LaSota was an employee of the State of California, and, in that capacity,
6 she acted under the color of state law. Except as expressly admitted, Keene denies
7 the remainder of the allegations in Paragraph 47 of the Complaint.

8 48. Keene denies the allegations in Paragraph 48 of the Complaint.

9 49. Keene denies the allegations in Paragraph 49 of the Complaint.

10 SECOND CLAIM

11 50. Keene incorporates by reference his answers to Paragraphs 1 through
12 49 of Plaintiff's Complaint. Except as expressly admitted, Keene denies the
13 allegations in Paragraph 50 of the Complaint.

14 51. Keene denies the allegations in Paragraph 51 of the Complaint.

15 52. Keene denies the allegations in Paragraph 52 of the Complaint.

16 THIRD CLAIM

17 53. Keene incorporates by reference his answers to Paragraphs 1 through
18 52 of Plaintiff's Complaint. Except as expressly admitted, Keene denies the
19 allegations in Paragraph 53 of the Complaint.

20 54. Keene denies the allegations in Paragraph 54 of the Complaint.

21 55. Keene denies the allegations in Paragraph 55 of the Complaint.

22 56. Keene denies the allegations in Paragraph 56 of the Complaint.

23 FOURTH CLAIM

24 57. to 61. Keene asserts that this former cause of action was validly
25 dismissed against him and, to the extent that Plaintiff voluntarily dismissed it
26 against him, Plaintiff has waived any right to appeal the dismissal or deletion of this
27 cause of action from Plaintiff's Complaint.

FIFTH CLAIM

62. Keene incorporates by reference his answers to Paragraphs 1 through 61 of Plaintiff's Complaint. Except as expressly admitted, Keene denies the allegations in Paragraph 62 of the Complaint.

63. Keene admits that at all times mentioned in Plaintiff's Complaint he was an employee of the state of California, and, in that capacity, he acted under the color of state law. Keene also admits that Sergeant Waughan and Officer Tolen were employees of the State of California at all times mentioned in Plaintiff's Complaint, and, in that capacity, they acted under the color of state law. Upon information and belief, Keene admits that at all times mentioned in Plaintiff's Complaint, LaSota was an employee of the State of California, and, in that capacity, she acted under the color of state law. Except as expressly admitted, Keene denies the remainder of the allegations in Paragraph 63 of the Complaint.

64. Keene denies the allegations in Paragraph 64 of the Complaint.

SIXTH CLAIM

65. Keene incorporates by reference his answers to Paragraphs 1 through 64 of Plaintiff's Complaint. Except as expressly admitted, Keene denies the allegations in Paragraph 65 of the Complaint.

66. Keene admits that at all times mentioned in Plaintiff's Complaint he was an employee of the state of California, and, in that capacity, he acted under the color of state law. Keene also admits that Sergeant Waughan and Officer Tolen were employees of the State of California at all times mentioned in Plaintiff's Complaint, and, in that capacity, they acted under the color of state law. Upon information and belief, Keene admits that at all times mentioned in Plaintiff's Complaint, LaSota was an employee of the State of California, and, in that capacity, she acted under the color of state law. Except as expressly admitted, Keene denies the remainder of the allegations in Paragraph 66 of the Complaint.

67. Keene denies the allegations in Paragraph 67 of the Complaint.

SEVENTH CLAIM

68. Keene incorporates by reference his answers to Paragraphs 1 through 67 of Plaintiff's Complaint. Except as expressly admitted, Keene denies the allegations in Paragraph 68 of the Complaint.

69. Keene admits that the statement was made that Plaintiff stated that he was “going to come with nothing but the gun God gave me” or similar words to the same effect. Except as expressly admitted, Keene denies the remainder of the allegations in Paragraph 69 of the Complaint.

70. Keene admits that at all times mentioned in Plaintiff's Complaint he was an employee of the state of California, and, in that capacity, he acted under the color of state law. Keene also admits that Sergeant Waughan and Officer Keene were employees of the State of California at all times mentioned in Plaintiff's Complaint, and, in that capacity, they acted under the color of state law. Upon information and belief, Keene admits that at all times mentioned in Plaintiff's Complaint, LaSota was an employee of the State of California, and, in that capacity, she acted under the color of state law. Except as expressly admitted, Keene denies the remainder of the allegations in Paragraph 70 of the Complaint.

71. Keene denies the allegations in Paragraph 71 of the Complaint.

EIGHTH CLAIM

72. Keene incorporates by reference his answers to Paragraphs 1 through 71 of Plaintiff's Complaint. Except as expressly admitted, Keene denies the allegations in Paragraph 72 of the Complaint.

73. Keene admits that at all times mentioned in Plaintiff's Complaint he was an employee of the state of California, and, in that capacity, he acted under the color of state law. Keene also admits that Sergeant Waughan and Officer Tolen were employees of the State of California at all times mentioned in Plaintiff's Complaint, and, in that capacity, they acted under the color of state law. Upon information and belief, Keene admits that at all times mentioned in Plaintiff's

1 Complaint, LaSota was an employee of the State of California, and, in that capacity,
2 she acted under the color of state law. Except as expressly admitted, Keene denies
3 the remainder of the allegations in Paragraph 73 of the Complaint.

4 74. Keene denies the allegations in Paragraph 74 of the Complaint.

5 **CONCLUSION**

6 75. Keene denies the allegations in Paragraph 75 of the Complaint.

7
8 **PRAYER**

9 1. Keene denies that Plaintiff is entitled to the relief he requests in
10 Paragraph 1.

11 2. Keene denies that Plaintiff is entitled to the relief he requests in
12 Paragraph 2.

13 3. Keene denies that Plaintiff is entitled to the relief he requests in
14 Paragraph 3.

15 4. Keene denies that Plaintiff is entitled to the relief he requests in
16 Paragraph 4.

17 5. Keene denies that Plaintiff is entitled to the relief he requests in
18 Paragraph 5.

19 6. Keene denies that Plaintiff is entitled to the relief he requests in
20 Paragraph 6.

21

22 **AFFIRMATIVE DEFENSES**

23 AS SEPARATE AND AFFIRMATIVE DEFENSES, CHP Officer Keene
24 alleges as follows:

25

26 **AFFIRMATIVE DEFENSE NO. 1**

27 (Failure to State Sufficient Facts to State a Cause of Action)

28 The Complaint and each cause of action therein fail to state facts sufficient to
13

1 constitute a cause of action upon which relief may be granted against Keene.

2 AFFIRMATIVE DEFENSE NO. 2

3 (Qualified Immunity)

4 To the extent Keene is charged with exercising the enforcement and
5 regulatory power of the state, under the color of law, he is entitled to qualified
6 immunity from any liability. Keene acted at all times herein relevant, with good
7 faith or due care, within the scope of discretion, and pursuant to laws, regulations,
8 rules, and practices reasonably believed to be in accordance with the Constitution
9 and laws of the United States. In addition, or alternately, at all times relevant,
10 Keene acted in good faith and entertained an honest, reasonable belief that his
11 actions were in accord with clearly established law, statutory or constitutional
12 rights, including California law, of which a responsible person would have known.

13 AFFIRMATIVE DEFENSE NO. 3

14 (Comparative Fault)

15 Any and all alleged happenings and events, damages and injuries, if there
16 were any, were proximately caused and contributed to by the acts or omissions of
17 Plaintiff or others, each and all of whom failed to exercise ordinary care in their
18 own behalf at all times and places alleged in the Complaint. Should Plaintiff herein
19 recover damages, the amount thereof should be abated, apportioned and reduced to
20 the extent that the fault or negligence of any other person or entity caused or
21 contributed to damages, if any there were.

22 AFFIRMATIVE DEFENSE NO. 4

23 (Estoppel)

24 The conduct of Plaintiff estops him from asserting any or some of the claims
25 for relief alleged in his Complaint against Keene, respecting the matters that are the
26 subject of his Complaint, by virtue of his own conduct, representations, knowledge,
27 and omissions, or by the conduct, representations, knowledge, and omissions of
28 others whose conduct is chargeable to Plaintiff.

AFFIRMATIVE DEFENSE NO. 5

(Probable or Reasonable Cause)

3 The detention or arrest alleged in Plaintiff's Complaint was regular and
4 lawful and made in good faith by a peace officer or peace officers acting within the
5 course and scope of authority and with probable or reasonable cause to believe at
6 the time that such action was lawful.

AFFIRMATIVE DEFENSE NO. 6

(Proximate Causation)

9 Keene was not the actual or proximate cause of any alleged injury or
10 damages to Plaintiff. To the extent that Plaintiff suffered any injury or damages, it
11 was the result of the negligent or deliberate acts of Plaintiff or others.

AFFIRMATIVE DEFENSE NO. 7

(Failure to Allege a Conspiracy)

14 Plaintiff has failed to allege facts sufficient to demonstrate a conspiracy by
15 the defendants to deprive him of his civil rights. Moreover, Plaintiff has failed to
16 allege facts showing that more than one party, as that term is used in the law of
17 conspiracy, conspired for each of the cause of action alleged in Plaintiff's
18 Complaint.

AFFIRMATIVE DEFENSE NO. 8

(Lack of Duty)

21 Keene did not owe any duty of care to Plaintiff, and neither stood or stands in
22 such a special relationship to Plaintiff so as to give rise to any duty running to
23 Plaintiff.

AFFIRMATIVE DEFENSE NO. 9

(No Imputed or Respondeat Superior Liability)

26 There is no imputed liability between public officers and/or employees in
27 actions under the Federal Civil Rights Act, including no imputed liability for any
28 other public employee's allegedly unconstitutional acts or omissions. Keene is not

1 liable under federal or state law for any injury caused by any unconstitutional or
2 tortious acts or omissions of any subordinate or other public employee.

3 **AFFIRMATIVE DEFENSE NO. 10**

4 (Testimonial Absolute Immunity)

5 Keene is absolutely immune for any liability under the Federal Civil Rights
6 Act arising from his testimony in any administrative or judicial proceeding,
7 regardless of whether the testimony was true, false, or perjured, based on *Briscoe v.*
8 *LaHue*, 460 U.S. 325, 326, 341-46 (1983), and its progeny.

9 **AFFIRMATIVE DEFENSE NO. 11**

10 (Claims Variance)

11 If and to the extent that the allegations of Plaintiff's Complaint attempt to
12 enlarge upon the facts and contentions set forth in his Victim Compensation and
13 Government Claims Board claim, Plaintiff's Complaint fails to state a cause of
14 action and is barred by California Government Code sections 905.2, 911.2, 945.4,
15 or 950.2.

16 **AFFIRMATIVE DEFENSE NO. 12**

17 (Failure to Mitigate)

18 If Plaintiff has suffered any damages as a result of the facts alleged in his
19 Complaint and in this action, which Keene denies, Plaintiff is not entitled to recover
20 some or all of his alleged damages, due to his failure to take reasonable, necessary,
21 appropriate and/or feasible steps to mitigate or minimize his alleged injury or
22 damages.

23 **AFFIRMATIVE DEFENSE NO. 13**

24 (Failure to State Claim for Punitive Damages)

25 The Complaint and each cause of action therein fail to allege facts sufficient
26 to state a claim for punitive or exemplary damages. Keene did not act with
27 malicious intent, fraud, or reckless disregard to deprive Plaintiff of any
28 constitutional right or to cause any other injury to Plaintiff, and, therefore, Keene is

1 not liable for punitive damages.

2 AFFIRMATIVE DEFENSE NO. 14

3 (Constitutional Defenses to Punitive Damages, As Applied)

4 Any award for punitive damages herein would result in a deprivation of
5 rights under the Constitution of the United States in that:

6 A. The statutes and laws purporting to prescribe criteria for an award for
7 punitive damages are vague in that they are not sufficiently specific to know what
8 conduct will subject one to such penalty;

9 B. Any award of punitive damages herein would violate the due process
10 clauses of the Constitution of the United States in that the standards for setting such
11 damages are void for vagueness and there is no objective standard for limiting the
12 amount of punitive damages;

13 C. Such award for punitive damages would violate the equal protection
14 clauses of the Constitution of the United States in that it would encourage
15 disproportionate punishment without a rational basis and amount to an arbitrary
16 classification;

17 D. Keene would be deprived in other ways of the right to due process; or

18 E. Such award was excessive in nature or amount.

19 As a result, any award of punitive herein should be reduced as excessive or
20 not allowed.

21 AFFIRMATIVE DEFENSE NO. 15

22 (Frivolous Complaint)

23 Plaintiff's Complaint and its causes of action against Keene, considered
24 separately or as a whole, are frivolous, unreasonable, or without foundation.
25 Therefore, attorneys' fees should be awarded to Keene.

26 AFFIRMATIVE DEFENSE NO. 16

27 (Immunity)

28 There is no liability under state law for injury or damages to Plaintiff, if any

1 occurred, caused by the instituting or prosecuting of any judicial or administrative
2 proceeding. (Cal. Gov. Code, §§ 820.2, 821.6.)

3 AFFIRMATIVE DEFENSE NO. 17

4 (Immunity)

5 Individuals authorized to detain a person for 72-hour treatment and
6 evaluation pursuant to California Welfare and Institutions Code section 5150 shall
7 not be held civilly liable for exercising this authority in accordance with the law.
8 There is no liability under state law for injury or damages to Plaintiff, if any
9 occurred, caused by the instituting or prosecuting of any judicial or administrative
10 proceeding. (Cal. Welf. & Inst. Code, § 5278.)

11 AFFIRMATIVE DEFENSE NO. 18

12 (Immunity)

13 There is no liability or any injury or damages, if there were any, resulting
14 from making or failing to make any, or an adequate, physical or mental examination
15 or for diagnosing or failing to diagnose or for prescribing for any mental illness.
16 (Cal. Gov. Code, §§ 855.6, 855.8.)

17 AFFIRMATIVE DEFENSE NO. 19

18 (Immunity)

19 There is no liability or any injury or damages, if there were any, resulting
20 from a determination to confine or to place terms and conditions on confinement for
21 mental illness. (Cal. Gov. Code, § 856.)

22 AFFIRMATIVE DEFENSE NO. 20

23 (Truth)

24 The statements allegedly made by Keene in Plaintiff's Complaint were not
25 false. To the contrary, they were substantially truthful, if they were made at all, and
26 any statements which were not substantially truthful were made by others.

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AFFIRMATIVE DEFENSE NO. 21

(Special Damages)

To the extent that Plaintiff seeks special damages in his Complaint, particularly due to his failure to allege facts sufficient to allege defamation per se, he has failed to allege special damages with sufficient specificity, and lacks sufficient basis for their recovery. (Cal. Civ. Code, § 45a.)

AFFIRMATIVE DEFENSE NO. 22

(Lack of Knowledge)

Keene did not know, and in the exercise of reasonable care could not have known, of the purported falsity of the statements or representations alleged in Plaintiff's Complaint.

AFFIRMATIVE DEFENSE NO. 23

(Privilege)

The statements alleged in Plaintiff's Complaint are privileged because they were made, to the extent that they were made at all, in the proper discharge of an official duty, or in the initiation or course of a proceeding authorized by law. (Cal. Civ. Code, § 47.)

AFFIRMATIVE DEFENSE NO. 24

(Law Enforcement Proceeding Privilege)

The statements alleged in Plaintiff's Complaint are privileged because they were made, if they were made at all, in a judicial or other official proceeding authorized by law or in the initiation or course of a proceeding authorized by law, including, but not limited to, communication with law enforcement agencies for the purposes of a detention or arrest. (Cal. Civ. Code, § 47, subd. (b); *Hagberg v. California Federal Bank* (2004) 32 Cal. 4th 350.)

AFFIRMATIVE DEFENSE NO. 25

(Lack of Malice)

The defamatory statements alleged in Plaintiff's Complaint were made, to the

1 extent that they were made, without malice to persons who were interested in the
 2 subject matter of the alleged communications. Keene was also interested in the
 3 subject matter of the alleged communications as to afford a reasonable ground for
 4 supposing the motive for the communication to be innocent or was requested by a
 5 person interested to give the information. (Cal. Civ. Code, § 47, subd. (c).)

6 AFFIRMATIVE DEFENSE NO. 26

7 (Publication Privilege)

8 The statements alleged in Plaintiff's Complaint are privileged because they
 9 were made, to the extent that they were made at all, as a fair and true report in a
 10 public journal of a judicial or other official public proceeding of anything said in
 11 the course thereof, or of a verified charge or complaint to a public official upon
 12 which a warrant issued. (Cal. Civ. Code, § 47, subd. (d).)

13 AFFIRMATIVE DEFENSE NO. 27

14 (Lawful Detention)

15 To the extent that any person was restrained or restricted in any way in the
 16 incident alleged in the Complaint, such restraint and restriction was a lawful
 17 detention rather than an arrest.

18 AFFIRMATIVE DEFENSE NO. 28

19 (Immunity)

20 At the times and place alleged in the Complaint, Keene was a peace officer in
 21 the course and scope of employment. At all relevant times, Keene had reasonable
 22 cause to believe that Plaintiff had committed a public offense or a violation of state
 23 law in an officer's presence, and so believing, exercised the power, and discharged
 24 the duty, of lawful detention or arrest. Thus, he is immune from civil liability under
 25 state law. (Cal. Penal Code, §§ 836.5, 847.)

26 AFFIRMATIVE DEFENSE NO. 29

27 (Privilege)

28 To the extent that any force was used in making the arrest or detention
 20

1 alleged in the complaint, it was privileged as necessary to effect an arrest or to
2 overcome resistance.

AFFIRMATIVE DEFENSE NO. 30

(Resistance to Arrest)

5 Only reasonable force and restraint were used in the incident alleged in
6 Plaintiff's Complaint. Plaintiff knew or should have known that an arrest or
7 detention was being made by peace officers and had a duty to obey the officers'
8 orders and refrain from using force or any weapon to resist any such arrest or
9 detention, and was in violation of California Penal Code sections 148 or 834a in
10 failing to refrain from assaulting, threatening, obstructing, or resisting peace
11 officers.

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WHEREFORE, Keene prays that:

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DEMAND FOR A JURY TRIAL

Defendant CHP Officer Keene demands, pursuant to Federal Rule of Civil Procedure 38, that the above-entitled matter and all triable issues be tried by and before a jury to the extent provided for and allowed by law.

Dated: September 20, 2016 Respectfully submitted,

KAMALA D. HARRIS
Attorney General of the State of California
ELIZABETH S. ANGRES
Supervising Deputy Attorney General

By: /s/ Gary Ostrick
GARY OSTRICK
Deputy Attorney General
Attorneys for Defendants Rachel LaSota, CHP
Officer Keene, CHP Officer Tolen, and CHP
Sergeant Waughan

CERTIFICATE OF SERVICE

Case Name: **Robert S. Markman v. Rachel LaSota, et al.** No. **2:15-cv-03335-DDP-KLS**

I hereby certify that on September 20, 2016, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system:

DEFENDANT CHP OFFICER KEENE'S (ERRONEOUSLY NAMED AS KEANE) ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT; DEMAND FOR JURY TRIAL

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, and am a member of the California State Bar. I am 18 years of age or older and not a party to this matter.

I further certify that some of the participants in the case are not registered CM/ECF users. On September 20, 2016, I caused this document to be mailed by depositing a true copy thereof enclosed in a sealed envelope at a United States post office for collection, to the following non-CM/ECF participants:

Robert S. Markman
18554 Frankfort Street
Northridge, CA 91324

I declare under penalty of perjury under the laws of the United States the foregoing is true and correct and that this declaration was executed on September 20, 2016, at Los Angeles, California.

Gary Ostrick
Declarant

/s/ Gary Ostrick
Signature